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LEGAL PROFESSION IN ANCIENT INDIA

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It has sometimes been remarked that in the history of ancient India, there are no glimpses even, of the existence of the legal profession. While it may be true that advocacy as now understood was probably not known in ancient India it would, however, be incorrect to assume that law as a profession was altogether unknown to the dharma-sastra writers. The Mrichchakatika—a composition of the 3rd century A.D.—contains an interesting description of an ancient trial. Though it mentions that the Judge is assisted at the trial by various persons including a लेखक or scribe who writes down the charges and the evidence, and that the audience may take an active part in the proceedings, there is no reference to any lawyer as such having a place at the trial. This becomes intelligible if the background in which an ancient court functioned and justice was administered is clearly borne in mind. In early Hindu literature as well as in social life the concept of law was expressed by the term "dharma." The law-givers regarded "dharma" as derived from *loka dharana.* The Taittiriya Samhita remarks : धर्मो विश्वस्य जगतः प्रतिष्ठा: It is called "dharma" because it sustains the people. The Mahabharata too conveys the same idea when it observed :

धारणाद्धर्म इत्याहुः धर्मो धारयते प्रजाः ।
यस्माद्धारणसंयुक्तं स धर्म इति निश्चयः ॥

The King was not above the law but had to administer it. Transgression would draw on him punishment. In the Manu Smriti it is said : "It (punishment) strikes down the King who swerves from his duty together with his relatives."[1] Kautilya lays down a similar principle in the Arthasastra and states that the Court could punish even the King as the latter could punish the subject.

उत्तमापरमध्यत्वं प्रदेष्टा दण्डकर्मणि ।
राज्ञश्च प्रकृतीनां च कल्पयेदन्तरान्वितः ॥

It was therefore vital that in the administration of justice there should be no flaw or miscarriage. To ensure this the early texts provide that in the *sabha*—which was the most important body that administered justice in early times—the King should do his work surrounded by Brahmins, Ministers, etc.

व्यवहारान् दिदृक्षुस्तु ब्राह्मणैस्सह पार्थिवः ।
मन्त्रज्ञैर्मन्त्रिभिश्चैव विनीतः प्रविशेत् सभाम् ॥

"A King desirous of investigating law cases must enter his Court of justice preserving a dignified demeanour together with Brahmanas and with experienced councillors."[2] The Brahmins were to be associated, for, the administration of justice was part of

1. VII, 28. 2. Manu VIII, 1.

the moral order to be maintained which was to be according to the Vedas. And the Brahmins alone had the requisite vedic knowledge. Whatever may have been the practice in the vedic period itself, during the sutra period at any rate, the only community associated with justice was the Brahmin. This is borne out by an observation of Gautama : द्वौ लोके धृतव्रतौ राजा बहुश्रुतश्च ब्राह्मणः ।

"There are in the world two dedicated to the upholding of morals, the King and the learned Brahmin."[1] In course of time the King's place in the Court was taken by the प्राड्विवाक or the judge, who was a Brahmin.[2] The function of the Brahmins present in Court is particularly pointed out by a text of Gautama, namely, that he was to interrogate the witnesses : राजा प्राड्विवाको ब्राह्मणो वा बहुश्रुतः[3] ।

In fact any Brahmin learned in the law could assist the Court whether appointed or unappointed. It was the belief that one who practises the law speaks with a blessed voice. Narada states[4] :

अनियुक्तो नियुक्तो वा धर्मज्ञो वक्तुमर्हति ।
दैवीं वाचं स वदति यः शास्त्रमुपजीवति ॥

But unless one knew the dharma one cannot practise, in the absence of an appointment. This is clear from a text of Narada that in a litigation one who has no appointed position should say nothing and he who has such a position should speak without bias.[5]

नानियुक्तेन वक्तव्यं व्यवहारे कथञ्चन ।
नियुक्तेन तु वक्तव्यमपक्षपातितं वचः ॥

One versed in law and attending the Court is enjoined if occasion arises to give his opinion to prevent a perversion of justice, for to preserve silence under the circumstances would be to commit a sin. Manu has said[6] :

सभायां न प्रवेष्टव्यं वक्तव्यं वा समञ्जसम् ।
अब्रुवन् विब्रुवन् वापि नरो भवति किल्बिषी ॥

The non-mention in the Mrichchakatika of the lawyer has in the circumstances no significance.

That persons versed in the law and attending Court could derive remuneration for the services rendered is clear from a text of Manu[7] :

त्रयः परार्थे क्लिश्यन्ति साक्षिणः प्रतिभूः कुलम् ।
चत्वारस्तूपचीयन्ते विप्र आढ्यो वणिङ् नृपः ॥

"Three suffer for the sake of others, witnesses, a surety and judges ; but four enrich themselves, a Brahmana, a money-lender, a merchant and a king." The enrichment of the विप्रः or Brahmin can only be by his receiving remuneration for the assistance that he afforded. It would thus seem that though confined to the Brahmins, law as a profession had come into vogue during the time of the Manu Dharmasastra. This view receives some support from the sastraic provisions in regard to self-acquired property. That *vidyadhana* may be retained by the acquirer and not shared is recognised by Gautama[8], who says : स्वयमार्जितमवैद्येभ्यो वैद्यः कामं न दद्यात् ।

1. Gautama, XI, 19.
2. Manu VIII, 9.
3. Gautama XIII, 26.
4. Narada III, 2.
5. See also Asahaya on Narada II, 1, 2.
6. Manu VIII, 13.
7. Manu VIII, 169.
8. Gautama XXIX, 30.

"a learned one may not, if he likes, give his self-acquisition to the unlearned ones." The acquisition through *vidya* of a Brahmin can only be by way of payments or honoraria or prizes obtained through a display of talents in debates, forensic contests, etc. This is borne out by a text of Katyayana[1], which says : "What is gained by proving superior in learning after a prize has been offered must be considered as acquired through learning and is not included in partition among co-heirs. What has been obtained from a pupil or by officiating as a priest or for answering a question or for determining a point in dispute or for the display of knowledge or by success in disputation or for reciting the vedas with transcendent ability, the sages have declared to be the gains of learning and not subject to partition. What is gained through skill by winning from another a stake at play, Brihaspati ordains as gains of learning not liable to partition. What is obtained by the boast of learning, what is received from a pupil or for the performance of a sacrifice, Bhrigu calls the acquisition of science. The same rule likewise prevails in regard to artists and in regard to what has been gained in excess of the prescribed hire. What has been gained by superiority in learning and what has been acquired in a sacrifice or from a pupil, sages have declared to be the acquisitions of science. What is otherwise acquired is the joint property." The Smriti Chandrika explains "success in dispute" in the above context as getting the better of another "in an ostentatious and argumentative discussion."[2] The Dayakrama Sangraha gives a similar interpretation. Mr. Jayaswal finds confirmation of the existence of professional lawyers at the time of the Manu Smriti in the reference to "*dhammapanikkas*" or traders in law, in the Milinda Panho, where they are described as persons "who according to the spirit and according to the letter, according to justice and according to reason, according to logic and by illustrations explain and re-explain, argue and re-argue."[3] Mr. Jayaswal also mentions in this connection the case of *Sridhara* v. *Mahidhara* set out in Asahava's commentary on Narada I, 6.[4] In that case the question at issue was whether a great-grandson would be liable to repay a debt incurred by his great-grandfather. One Sridhara had lent money to a trader Mahidhara with a stipulation for payment of interest at 2 per cent. per mensem. Shortly after the incurring of the loan the debtor died leaving a great-grandson Mahidhara, who denied his liability to pay. In the action that ensued in the Courts at Pataliputra, one Smarta Durdhara is stated as appearing for the defendant but as being eventually confuted by Smarta Sekhara. The later works of Hindu jurists place the matter of the existence of a legal profession in ancient India beyond doubt. The Sukra Niti, in particular, affords a flood of light. The engagement of a प्रतिनिषि or proxy to conduct and argue a case is specifically provided for[5] :

व्यवहारानभिज्ञेन ह्यन्यकार्याकुलेन च ।
प्रत्यर्थिनार्थिना तज्ज्ञः कार्यः प्रतिनिधिस्तदा ॥

"A plaintiff or a defendant who is unacquainted with legal practice and who is overburdened with other work may employ an experienced substitute or proxy." The person so appointed नियुक्त may make a claim or make a defence.[6] One knowing dharma and vyavahara alone should be employed.[7] One not employed cannot speak and is liable to be punished[8] :

यो न भ्राता न च पिता न पुत्रो न नियोगकृत् ।
परार्थवादी दण्ड्यः स्याद्व्यवहारेषु विब्रुवन् ॥

1. Cited in Smriti Chandrika (Sethur's A Complete Collection of Hindu Law Books on Inheritance, I, 245-246).
2. *Ibid.*, 245.
3. See Rhys Davis. Sacred Books of the East, Vol. XXXVI, 236.
4. *Ibid.*, Vol. XXXIII, pp. 43-44.
5. Sukra Niti IV, 5, 108.
6. *Ibid.*, IV, 5, 109.
7. *Ibid.*, IV, 5, 114.
8. *Ibid.*, IV, 5, 116.

The acts of the advocate will be binding on the principal. It is stated[1]:

यः कश्चित् कारयेत् किंचिन्नियोगाद्येन केनचित् ।
तत् तेनैव कृतं ज्ञेयमनिवार्यं हि तत् स्मृतम् ॥

" Where any one causes anything to be done by any one appointed by him, such act is regarded as being done by him (the appointer) and it must be regarded as binding on him." The appointer will not be bound where the acts done by the lawyer are prejudicial to him.[2] As to the remuneration, rules are prescribed. It is to be 1/16, 1/20, 1/40, 1/80 or 1/160 of the value of the dispute. The Sukra Niti states[3]:

नियोगितस्यापि भृतिं विवादात् षोडशांशिकीम् ।
विंशत्यंशां तदर्धां वा तदर्धां च तदर्धिकाम् ॥

The fee will be computed at reduced rates proportionately as the value of the suit increases. If a number of lawyers are engaged then the fee is to be regulated by special engagements. It is stated[4]:

यथा द्रव्याधिकं कार्यं हीनाहीना भृतिस्तथा ।
यदि बहुनियोगी स्यादन्यथा तस्य पोषणम् ॥

" The fee must be lessened proportionately to the amount of dispute being large. Where there are many Niyogis their fee ought to be otherwise specially arranged." Punishment is provided for the lawyer who misbehaves with reference to the case which he is engaged to conduct either by taking a bribe or through avarice. *Cf*:

अन्यथाभृति गृह्णन्तं दण्डयेच्च नियोगिनम्[5] ॥

" A Niyogi receiving fee otherwise (than according to rule) shall be punished." The foregoing authorities make it fairly clear that advocacy as a profession was known even during relatively early times under the sovereignty of Hindu rulers.

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1. Sukra Niti IV, 5, 111.
2. Narada II, 1, 2 : Sukra Niti, IV, 5, 23.
3. Sukra Niti IV, 5, 112.
4. *Ibid.*, IV, 5, 113.
5. *Ibid.*, IV, 5, 114.